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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

LEON TAISACAN, individually and)
ESTATE OF RAMONA SATUR)
TAISACAN, through its administrator)
LEON TAISACAN,)

CIVIL ACTION NO. 97-807

Plaintiffs,

v.

DECISION AND ORDER

MARIANAS PUBLIC LAND)
CORPORATION, a/k/a DIVISION OF)
PUBLIC LANDS of the DEPARTMENT)
OF LANDS AND NATURAL RESOURCES,)
and COMMONWEALTH OF THE)
NORTHERN MARIANA ISLANDS,)

Defendants.)

I. INTRODUCTION

Plaintiffs Taisacan ("Taisacan") bring this action seeking just compensation for the taking and use of their land for a public roadway known as the W-2 highway. Taisacan requests specific performance by the Defendants ("MPLC") for a land exchange based on a "letter agreement," dated May 25, 1993. In the alternative, Taisacan requests payment in the amount of \$539,550, plus interest for the use of their land from June 7, 1993 to the present. MPLC asserts that Taisacan received compensation for the use of the land by the Micronesian War Claims Commission and is therefore not entitled to further compensation. The court, having reviewed the briefs, exhibits,

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1 affidavits, and having heard and considered the arguments of counsel, now renders its written
2 decision.

3 II. FACTS

4 A. Procedural Background

5 On July 18, 1997, Taisacan filed a complaint asserting that the government used Taisacan's
6 real property for a public roadway without just compensation and due process, in violation of the
7 Fifth Amendment of the federal constitution and Articles I, § 5 and XIII, § 2 of the NMI
8 constitution. Taisacan also asserted a breach of contract claim alleging that MPLC failed to
9 provide promised compensation in the form of a land exchange. The court set trial for November
10 24, 1998. On November 23, 1998, MPLC filed a motion to dismiss for failure to state a claim. The
11 court granted MPLC's motion to dismiss Taisacan's claims for denial of due process and taking
12 brought directly under both the federal constitution and the NMI constitution. The court granted
13 Taisacan leave to amend the complaint to add a due process claim under 42 U.S.C.A. §1983 and
14 to state a claim for a taking without payment of just compensation under Commonwealth statutory
15 law. The court denied MPLC's motion to dismiss Taisacan's claim for breach of contract.

16 Taisacan filed an amended complaint setting forth seven causes of action. The court
17 granted MPLC's motion to partially dismiss. Taisacan then filed a second amended complaint.
18 The trial proceeded on three claims: (1) Defendants use Plaintiffs' real property without just
19 compensation, in violation of Commonwealth statutory law; (2) Defendants used Plaintiffs' real
20 property without due process, in violation of 42 U.S.C.A. § 1983; and (3) Defendants breached a
21 contract to provide for just compensation in either a specified amount or by land exchange.
22 Following the trial, both parties submitted their findings of fact and conclusions of law.

23 B. Factual Background

24 Lot 1774, located in Chalan LauLau, Saipan, is the property of the heirs of Ramona Satur
25 Taisacan. A severed portion of Lot 1774, consisting of an area of 1,199 square meters, is being
26 used as a public right of way under the control of the CNMI government. No action in eminent
27 domain was brought for use of right of way.

28 Use of Lot 1774 began in 1944 with the United States invasion of Saipan. In 1959, Mariana

Taisacan Wabol, as trustee for Lot 1774, gave the government of the Trust Territory of the Pacific Islands ("Trust Territory government") permission to use fifty feet from the center of the highway into Lot 1774 to run power and water lines. In return for the easement, Wabol received free installation of the power and water lines to the house. Wabol did not transfer title to the land.

In 1973, pursuant to the Micronesian War Claims Act of 1971, Pub. L. No. 92-39, 85 Stat. 92 (1971) ("War Claims Act"), Benedicto S. Taisacan ("Benedicto") filed a claim alleging damage and use of Lot 1774 originating before July 1951. Under Title I of the Act, the Micronesian Claims Commission ("MCC") awarded Benedicto \$3,328 for losses of dwellings, water tanks, household goods and personal belongings, and animals and poultry. Under Title II of the Act, the MCC awarded Benedicto for the "[i]ndefinite use of .76 acres from 1944." Specifically, the MCC awarded \$1,847 for "[l]oss of use 1944-1971," plus interest to 1975 in the amount of \$1,884. The MCC also awarded \$1,140 for damage to land, trees, and crops, plus interest to 1975 in the amount of \$274. No value was calculated for use of this land after 1971. On the remaining 13.54 acres of Lot 1774, MCC awarded \$9,749 for loss of use from 1944 to 1952, with interest to 1975 in the amount of \$15,501 and \$6,905 for damage to land, trees, and crops with interest to 1975 in the amount of \$9,529.

In 1992, the government began a roadway expansion and improvement project on the existing road at Lot 1774. In a letter to MPLC dated August 14, 1992, the Governor acknowledged that Lot 1774 was owned by Taisacan and had been used for many years for a public purpose as "a major leading access to government offices, commercial establishments and other businesses." See Plaintiffs Amended Complaint, Ex. B. The Governor also noted that the existing road had been constructed by the U.S. Armed Forces but was in need of widening. Thus, the Governor certified the acquisition of 1,199 square meters of Lot 1774 for the roadway project as a public purpose. MPLC then contacted Taisacan stating the importance of acquiring the land and asking if a land exchange would be acceptable.

In February 1993, Taisacan and the MPLC executed a Memorandum of Understanding ("MOU"). The government agreed to acquire the 1,199 square meters of Lot 1774 for a land exchange pursuant to the Public Purpose Land Exchange Act and related regulations. Taisacan

1 agreed to authorize the government to immediately enter Lot 1774, giving an irrevocable easement
2 to be converted into fee simple title when the land exchange was completed.

3 In May 1993, Taisacan received a letter from MPLC confirming “our mutual understanding
4 surrounding our negotiation and ensuing agreements regarding the proposed exchange of your
5 private property for public land.” See Plaintiffs Amended Complaint, Ex. E. The valuation of the
6 land was set a \$450 per square meter for a total compensation of \$539,550. Further, MPLC would
7 immediately survey a public land parcel and prepare a Quitclaim Deed of Exchange. Once the
8 deed was published, and there was no strong public opposition to the exchange, the deed would be
9 executed. Following the letter, MPLC specified Lot 018 G 02 in Kagman to be exchanged on the
10 condition the Department of Land and Natural Resources (“DLNR”) relinquished their claim on
11 the land parcel.

12 By 1997 the land exchange deed had not been prepared and Taisacan had not received
13 compensation for the use of Lot 1774. Taisacan tiled suit, and on November 20, 1998, the
14 Governor decertified the acquisition of Lot 1774 as serving a public purpose on the ground that
15 Taisacan received compensation by the MCC for the indefinite use of the land, which gave the
16 government the right to permanent use of the land without further compensation.

17 III. ISSUES

- 18 1. Whether there has been a taking of land requiring just compensation pursuant to the
19 Fifth Amendment of the federal constitution and Article XIII, § 2 of the NMI
20 Constitution.
- 21 2. Whether compensation received under the **Micronesian** War Claims Act of 197 1,
22 for the taking and use of Lot 1774 is sufficient compensation for the government’s
23 further taking and use of Lot 1774.
- 24 3. Whether Defendants violated Plaintiffs’ due process rights, in violation of 42
25 U.S.C.A. § 1983.
- 26 4. Whether the offer to acquire Lot 1774, at a value of \$450 per square meter, bound
27 the MPLC to enforce the land exchange agreement.

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IV. ANALYSIS

Taisacan first asserts that MPLC used Lot 1774 without just compensation, in violation of Commonwealth statutory law. Under the NMI Constitution, the government may exercise the power of eminent domain to acquire private property for the accomplishment of a public purpose. See NMI Const. art. XIII, § 1. Private property may not be taken without just compensation. See NMI Const. art. XIII, § 2.¹ "[A]ny permanent, physical occupation of an owner's property, authorized by the government. . . , constitutes a 'taking' of property for which just compensation is required" *Judlo, Inc. v. The Vons Companies, Inc.*, 259 Cal.Rptr. 624, 626-27 (Cal. 1989) (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982)). The failure to provide just compensation constitutes an unconstitutional taking. See *Q. C. Construction Co., Inc. v. Verrengia*, 700 F.Supp. 86, 87 (D. R.I. 1988).

Here, the government built and maintained a public roadway on Lot 1774. This is a permanent, physical occupation of private property. Thus, the government clearly effected a taking requiring just compensation. MPLC, however, asserts that Taisacan already received compensation under the War Claims Act and therefore, the government is not required to pay Taisacan again. This court disagrees.

In 1971, the United States Congress passed the War Claims Act to compensate Micronesian inhabitants of the Trust Territory of the Pacific Islands who claimed:

[D]amage to or loss or destruction of property, personal injury, or death caused by military and civilian employees of the United States Government and arising out of accidents or incidents between the dates of the securing of the various islands of Micronesia by the United States Armed Forces and July 1, 1951, and within an area under the control of the United States at the time of the accident or incident.

War Claims Act, preamble. The Act established two titles under which Micronesian inhabitants could make claims for damages. Title I compensated Micronesians for damages resulting from the actual hostilities between the United States and Japan during World War II, while Title II

¹The NMI Constitution essentially mirrors the "takings" provision of the Fifth Amendment to the federal constitution. See U.S. Const. amend. V.

compensated Micronesians for damages occurring after the securing of the island.

Specifically, Title I, § 104(a) covered:

(1) claims of the Micronesian inhabitants . . . who suffered loss of life, physical injury, and property damage directly resulting from the hostilities between the Governments of Japan and the United States between December 7, 1941, and the dates of the securing of the various islands of Micronesia by United States Armed Forces, and (2) those claims arising as postwar claims between the dates of the securing of the various islands of Micronesia by United States Armed Forces and July 1, 1951.

Title II, § 201 of the Act, compensated Micronesians:

[F]or a taking or for use or retention of such property where no payments or inadequate payments have been made for such taking, use, or retention when such damage, loss, or destruction was caused by the United States Army, Navy, Marine Corps, or Coast Guard, or individual members thereof, including military personnel and United States Government civilian employees, and including employees of the Trust Territory government acting within the scope of their employment: *Provided*, That . . . the accident or incident out of which the claim arose occurred prior to July 1, 1951, . . . and within an area under the control of the United States at the time of the accident or incident: *Provided, further*, That any such settlements made by such Commission and any such payments made by the Secretary under the authority of title I or title II shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary and not subject to review.

The War Claims Act further established the Micronesian Claims Commission to receive and adjudicate claims as well as to compensate claims under the respective titles. See War Claims Act, § 103.

To determine the manner of compensation under Title II, § 201, the MCC assumed that, under better circumstances, the United States would have entered into a lease with the land owner agreeing to pay rent and to return the property in its original condition or pay compensation for any diminution in value. See *In the matter of Lauria Olopai Tagabuel*, Micronesian Claims Comm'n Decision No. 4905, p. 7 (Mar. 10, 1975). Thus, the MCC imposed a constructive lease deemed to have terminated:

[E]ither when possession was returned to the owner; or, in appropriate instances on Saipan, when exchange land became available; or in 1971, the effective date of the Micronesian Claims Act, whichever first occurred. . . . Where land has continued in use to the present time, an award based upon a constructive lease deemed terminated in 1971 will be made consisting of payment for use of and damage to the land and including appropriate interest on

1 both. This award will be considered by the Commission to have
2 compensated a claimant in full for an indefinite use of such land and
3 where accepted by the claimant in full satisfaction shall constitute
4 a final settlement of any and all claims arising out of such past,
5 present, or future use of the property as called for by Section 20 1 of
6 the Act.

7 Id. at 7-8.

8 This court finds the MCC's decision to apply a constructive lease controlling. Under the
9 War Claims Act, the MCC had authority to render final decisions. See War Claims Act, § 104(a).
10 In the event the MCC denied a claim, or approved a claim for less than the amount claimed, the
11 War Claims Act provided for review of the decision. Id. Upon review, claimants were entitled to
12 a hearing before the MCC pursuant to "such regulations as the Commission may prescribe." *Id.*
13 At the conclusion of all claims, the MCC certified them to the Secretary of the Interior for
14 payment. *Id.* Thus, the decisions of the MCC were final and not subject to further agency and/or
15 judicial review. *Cf. County of Esmeralda, State of Nevada v. U.S. Dep 't of Energy*, 925 F.2d 12 16,
16 1218 (9th Cir. 1991) ("an agency action is unreviewable when a statute commits the action to the
17 agency's discretion, 'and the statute is drawn so that a court would have no meaningful standard
18 against which to judge the agency's exercise of discretion'").

19 A lease is a contract to let property for a specific unit of time. See BLACK'S LAW
20 DICTIONARY 615 (abridged 6th ed. 1991). The relationship of landlord and tenant is created by
21 express or implied contract. See *Matter of Great Northern Forest Products, Inc.*, 135 B.R. 46, 54
22 (Bankr. W.D. Mich. 1991).² "A general rule of landlord-tenant law, as applied between private
23 parties, is that the expiration or termination of a lease agreement terminates all rights of the lessee
24 in the premises, and it becomes the lessee's duty to surrender possession of the leasehold to the
25 lessor." *Prudential Ins. Co. of America v. United States*, 801 F.2d 1295, 1298-99 (Fed. Cir. 1986)
26 (applying this standard to a lease between the government and a private party); see *also Corp. of*
27 *the Catholic Bishop Nesqually v. Gibbon*, 158 U.S. 155,170 (1895) (The contract of lease implies
... a promise to surrender the possession to the [lessor] on termination of the lease). Therefore,

28 ²A constructive lease, or implied lease, may be established from the conduct of the parties. See *Theuerkauf*
v. Sutton, 306 N.W.2d 651, 657-58 (Wis. 1981) (citing *Erickson v. Goode11 Oil Co., Inc.*, 180 N.W.2d 798 (1970)).

1 upon termination of the lease in 1971, Lot 1774 returned to the full possession of Taisacan. The
2 Defendants cannot and do not retain an ongoing interest in Lot 1774 based on the MCC's
3 compensation under Title II for the taking and use of Lot 1774.

4 Furthermore, the plain reading of the War Claims Act shows that compensation was given
5 for loss and damage arising from the actions of the United States military during the invasion and
6 securing of Saipan as well as action of the United States military and the Trust Territory
7 government after the securing of Saipan. *See e.g., Office of Attorney General v. Deala*, 3 N.M.I.
8 110, 117 (1992) (if the meaning of a statute is clear it will not be construed contrary to its plain
9 meaning). Section 201 specifically states that:

10 [f]or the purpose of promoting and maintaining friendly relations by
11 the final settlement of meritorious post war claims, the Micronesian
12 Claims Commission is, . . . authorized to consider, ascertain, adjust,
13 determine, and make payments, . . . of all claims by Micronesian
14 inhabitants against **the United States or the government of the
15 Trust Territory of the Pacific Islands**. . . . (emphasis added).

16 The MCC was created for a specific purpose and for a specific time period. The MCC was directed
17 to take claims for a one year period. *Id.* at § 103(d). After the expiration of the one year period,
18 the MCC was given three years in which to adjudicate the claims. *Id.* at § 103(e). Thus, the War
19 Claims Act does not contemplate claims against governments that were not formed and were not
20 involved in the acts of the United States military or Trust Territory government.

21 MPLC asserts, however, that *Tagabuel* stands for the proposition that payments under Title
22 II constitutes payments for all future use of the property thus precluding the CNMI government
23 from further compensating Taisacan. The court disagrees with MPLC's reading of *Tagabuel*. The
24 holding in *Tagabuel* relates only to claims for use as available under the War Claims Act.
25 *See Tagabuel*, at 8.

26 MPLC further asserts that because compensation was given for "indefinite use" it was given
27 For permanent use. First, the MCC decision concerning Lot 1774 specifically awarded
28 compensation for "loss of use 1944-1971 ." Second, the term "indefinite" is defined as "more
synonymous with temporary than with permanent; indefinite contemplates that condition will end
at unpredictable time, whereas 'permanent' does not contemplate that condition will cease to exist."

1 See **BLACK'S LAW DICTIONARY** 529 (abridged 6th ed. 1991). Finally, the court reiterates that the
2 MCC applied a constructive lease terminating in 1971. Upon termination of the lease, Taisacan
3 regained full possession and ownership of Lot 1774. Thus, this court finds that Taisacan is entitled
4 to compensation for the taking and use of 1,199 square meters of Lot 1774.

5 Taisacan next asserts that MPLC effectuated a taking and use of Lot 1774 without due
6 process, in violation of 42 U.S.C.A. § 1983. Under § 1983:

7 Every person who, under color of any statute, ordinance, regulation, custom, or
8 usage, of any State or Territory . . . subjects, or causes to be subjected, any citizen
9 of the United States or other person within the jurisdiction thereof to the deprivation
of any rights, privileges, or immunities secured by the Constitution and laws, shall
be liable to the party injured

10 Taisacan, however, is suing the Defendants in their official capacities. “Neither the CNMI nor its
11 officers acting in their official capacity can be sued under § 1983.” *DeNieva v. Reyes*, 966 F.2d
12 480, 483 (9th Cir. 1992). Thus, this claim must fail.

13 Finally, Taisacan asserts that MPLC breached the contract for land exchange as
14 compensation for the use of Lot 1774. “In the analysis of contracts to which the government is a
15 party, it is the applicable rules and regulations which determine and define the point at which a
16 contract is enforceable.” *Hill v. CNMI*, 1 CR 983, 988 (D. N. Mar. I 1984). There are both
17 statutory and agency requirements that must be met to have a valid and binding land exchange.
18 Under 2 CMC § 4144:

19 (b) No public land shall be exchanged for private land or as
20 compensation for taking of private land unless:

21 (1) The exchange is for the accomplishment of a public
purpose specifically defined in 2 CMC § 4143(e); and

22 (2) The land to be exchanged is of comparable value based
23 on an independent appraisal made by a licensed appraiser at
24 approximately the same time for all land parcels to be exchanged.
25 In determining comparable value, any monetary compensation to be
included in the transaction shall be added to the appraised value of
the land held by the designated recipient of such compensation,
before making the comparison; and

26 (3) A public notice has been published in a newspaper of
27 general circulation and broadcast on the local radio and/or television
28 of the Commonwealth, both in English and the vernacular, once
each week for at least four consecutive weeks. Request from
concerned persons for the land exchange within the time frame

1 allocated for the public notice, for a public hearing, shall be heard
2 as requested.

3 There are seven situations that will satisfy the public purpose requirement under § 4143(e). The
4 first requirement under § 4 144 is that the exchange be for a public purpose pursuant to § 4 143(e).
5 The situation most applicable to the case at hand is § 4143(e)(2), in which the Governor may
6 certify land for public use or purpose. Here, Lot 1774 was certified for a public use. However, Lot
7 1774 was later decertified. Thus, the first requirement for a land exchange has not been met
8 because there is no certification for a public use or purpose at this time.

9 The second requirement has also not been met. The appraisal value in this case came from
10 an appraisal of land north of Lot 1774 and not Lot 1774 itself, as required by § 4 144(b)(2). Finally,
11 the third requirement was not met as there was no public notice.

12 Along with § 4144, MPLC promulgated its own internal rules and regulations to carry out
13 land exchanges. See 2 CMC § 4146. At trial, a land exchange manager for the Division of Public
14 Lands (“manager”) outlined the steps for a land exchange. First, the private landowner is identified
15 and certification by the Governor is sent to the Division of Public Lands. Next, an appraisal of
16 the private land is made and presented to the board of directors (“board”) for approval. Following
17 board approval, an offer letter is sent to the landowner. The next step is to appraise the parcel of
18 public land to be exchanged and obtain board approval. After obtaining board approval, a survey
19 is done and public notice is issued. Finally, a deed of exchange is drawn up and recorded.

20 The manager testified that the board never approved the appraisal value for the lot north of
21 Lot 1774 as the appraisal value of Lot 1774. Testimony established that there was no evidence of
22 board approval for the exchange of public land for Lot 1774. The manager further testified that
23 there was no public notice and that no deed had been drawn up and recorded. Thus, even though
24 Taisacan had an MOU and a letter of agreement, the necessary requirements for a land exchange
25 were not met. These two documents, the MOU and the letter of agreement, do not evidence a final,
26 binding agreement under the land exchange regulations. *See Rasa v. Dep ‘t of Lands and Natural*
27 *Resources*, Civ. No. 96-406 (N.M.I. Super. Ct. May 6, 1997) (Order on Defendant’s Motion for
28 Summary Judgment at 3), *aff’d in relevant part, Rasa v. Dep ‘t of Lands and Natural Resources*,

1 App. No. 97-012 (N.M.I. Sup. Ct. July 24, 1998). The court finds and concludes that no contract
2 for land exchange was formed. Thus, Plaintiffs claim for breach of contract fails.

3 V. CONCLUSION

4 For the foregoing reasons, this court finds that Taisacan is entitled to just compensation for
5 the taking and use of Lot 1774 by MPLC, that Taisacan fails in his claim for relief under 42
6 U.S.C.A. § 1983, and that MPLC did not breach the contract for land exchange.

7 SO ORDERED this 10 day of November, 1999.

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11 EDWARD MANIBUSAN, Presiding Judge
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